

**REPORT - PLANNING COMMISSION MEETING**  
**March 27, 2003**

**Project Name and Number:** Dham Residence Grading and Landscaping (PLN2003-00041)

**Applicant:** Vinod K. Dham

**Proposal:** To consider a Planned District Minor Amendment to P-96-11 and a Preliminary Grading Plan to allow for modifications to previously approved landscaping and grading improvements for a new single-family residence.

**Recommended Action:** Approve, subject to conditions; and  
Recommend Open Space Easement modifications to the City Council.

**Location:** 1130 Highland Terrace

**Assessor Parcel Number:** 513-0280-018-00

**Area:** 3.4 acres

**Owner:** Vinod K. Dham

**Agent of Applicant:** Vinod K. Dham

**Consultants:** Darryl Alexander, Alexander & Associates Inc.  
Martin Hoffman, Martin Hoffman Landscape Design & Consultation

**Environmental Review:** This project is exempt from environmental review per CEQA section 15303, New Construction or Conversion of Small Structures as it relates to the development of a single-family residence.

**Existing General Plan:** Very Low Density Residential, 0.5 – 1.5 dwelling units per acre.

**Existing Zoning:** P-96-11, Residential Planned District

**Existing Land Use:** Single family residence

**Public Hearing Notice:** Public hearing notification is applicable. A total of 24 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Highland Terrace, Vista Del Mar, Hunter Lane, Parkmeadow Drive, Highland Place, Vista Del Sol, Montevideo Circle, and Sunrise Drive. The notices to owners and occupants were mailed on March 17, 2003. A Public Hearing Notice was delivered to The Argus on March 12, 2003 to be published by March 17, 2003.

**Executive Summary:** The applicant requests Planning Commission approval of a Planned District Minor Amendment and Preliminary Grading Plan for modifications to previously approved landscaping and grading plans. Approval of the request will allow the applicant to modify non-permitted grading work and retain some improvements constructed without permits. The non-permitted grading work and improvements were discovered during a staff site visit for final occupancy of the residence. Staff believes that the proposed modifications will conform to City policies and recommends approval of the project as proposed.

**Previous Actions:** On June 11, 1996, the City Council approved Planned District P-96-11 for the development of a 13-lot single-family subdivision located east of Hunter Lane, known as Hunter Highlands.

On December 11, 1997, the Planning Commission approved the construction of a new 10,500 square foot residence and 1,200 square foot garage on the project site (Planned District Minor Amendment P-96-11E).

On March 12, 1998, the Planning Commission approved a 1,214 square foot two-story accessory structure that houses a 2-car garage on the lower floor and a 660 square foot guesthouse on the upper floor on the project site (Planned District Minor Amendment P-96-11G).

In January of 2000, the applicant applied for building permits to start the construction of the residence.

On July 12, 2001, the Planning Commission approved a 3,886 square foot indoor swimming pool addition to the main residence and a 120 square foot expansion to the 1,214 square foot accessory structure.

**Background:** In July of 2002, staff noticed non-permitted improvements during a site visit for final occupancy of the residence. The applicant was informed that final occupancy of the residence would not be granted because of the constructed non-permitted improvements and grading work. Grading work was done in order to create a flat patio area beyond the residence's rear patio in an Open Space Easement. Staff asked the Project Civil Engineer to prepare a grading plan that showed the as-built/constructed grading versus the grading permitted with the two building permits. Staff also requested an estimate of the amount of grading in excess of what was permitted. The Project Civil Engineer provided a preliminary grading plan including this calculation. Based upon as-built grades, the excess non-permitted grading is estimated to be 1,462 cubic yards of cut and 452 cubic yards of fill. The total amount of grading completed without permits, or revisions to the existing permits, was 1,914 cubic yards. The non-permitted, as-built grading compared with the approved grading for the site is provided as an informational enclosure.

Since November 2002, staff has met with the applicant on several occasions to discuss the issues related to the non-permitted work completed on-site. Staff indicated that it would not support the extent and type of grading done on the site and advised the applicant to consider alternatives to rectify the situation. The applicant applied for a Planned District Minor Amendment and Preliminary Grading Plan and worked with staff to resolve issues relating to the non-permitted work. The applicant was also informed that Open Space Easement modifications would be needed for areas affected by the erection of structures within the Open Space Easement. The Open Space Easement modifications require the review and approval by the City Council. The following summarizes the non-permitted work:

- Construction of a three-foot stacked-stone retaining wall (within the open space easement)
- Cuts of up to four feet upslope (east) of the retaining wall and cuts of up to eight feet downslope (west) of the retaining wall, to create a flat patio area behind the residence
- Fills of up to three and a half feet west of the flattened gravel patio
- Creation of slopes in excess of three to one (3:1) west of the flattened area
- Creation of a construction access road to the rear of the house. Along with the graded road, a gate was installed in the fence along Highland Terrace to provide vehicular access to the site. (see Hardscape Plan, sheet La-01)
- Expansion of the west side patio approximately 25 feet into the open space easement.
- Water tanks installed behind the pool house, at the top of the slope, within the open space easement.
- Pool house patio and staircase encroaching into the open space easement.

**Project Description:** The Planning Commission is being asked to consider a Planned District Minor Amendment and a Preliminary Grading Plan for modifications to previously approved landscaping and grading plans for the site. The applicant proposes to modify some of the current grading and improvements that were constructed without permits, so that the resulting project will conform to the "Hill Area Development Policy", Conditions of Approval for P-96-11 and

“Architectural Design Guidelines for Hunter Highlands”. In summary, the approval of the proposed project will allow the applicant to:

- a) Remove the three-foot stacked-stone retaining wall that extends into the open space easement. This retaining wall is the eastern boundary of the flat lawn area behind the residence.
- b) Retain a majority of the flattened rear patio area;
- c) Grade a portion of the slope east of the flat patio area. By eliminating the retaining wall, the slope will be modified to a slope not to exceed three horizontal to one vertical (3:1).
- d) Grade the slope west of the flat patio area to eliminate the construction access road. This area will be graded so that the final slopes do not exceed 3:1. Additionally, the existing gated access to Highland Terrace, near the bottom of the lot, will be removed and replaced with permanent fence.
- e) Grade the slope below the west side patio and fire pit. This area will be graded to smooth out some of the previously completed grading and create slopes that do not exceed 3:1.
- f) Retain structures, excluding the retaining wall (to be removed), that are now encroaching in the Open Space Easement. The Open Space Easement will be modified after the approval by the City Council of Open Space Easement modifications to exclude the area of encroachment and add new area equivalent to the area lost;
- g) Retain the 1,000 square foot expansion of the enlarged west patio at the end of the residence;
- h) Retain the water tanks and pumping equipment adjacent to the rear property line; and,
- i) Retain the hardscape/landscape modifications for the site, including the new staircase from the pool addition leading to the rear patio area.

The Preliminary Grading Plan before the Planning Commission (Exhibit “A”) includes the grading revisions listed above. The grading required to complete these revisions is estimated to be 917 cubic yards of cut and 423 cubic yards of fill, for a total of 1,340 cubic yards. Per the Grading Ordinance, the amount of grading done and proposed cannot be permitted without Planning Commission review and approval.

The applicant's landscape consultant indicates that the changes to the landscape plan reflect the new inclusion of the pool addition to the residence. The modified grading and landscaping on the site is in an effort to respond to the pool addition that was designed after the original landscape plans were approved as well as improve the usability of the terrace to the west of the residence, now that the pool had been relocated indoors. In addition, the landscape consultant noted that the original landscape plan was prepared years ago and was no longer in sync with the style of the residence, and that the as-built landscape plan better relates to the residence and improves the indoor/outdoor relationship of the site. Another purpose for the modifications was to create a more formalized patio area to improve the transition between the formal symmetry of the residence and the open space easement at the rear of the property. Additionally, the landscape consultant adds that the as-built landscape plan takes advantage of water conserving techniques, requiring only the two water well tanks above for irrigation.

The applicant also proposes to retain structures that currently encroach into the Open Space Easement. Details of the proposed Open Space Easement modifications and recommended action are identified in a latter section of this report.

**Grading and Landscaping Analysis:** As noted earlier, staff would not have approved the extent and type of grading conducted on the site, nor would staff approve any structures within the Open Space Easement. The applicant was informed of the unapproved improvements on the site and is proposing actions needed to correct the non-permitted work. Staff directed the applicant to provide plans that show the as-built grading and improvement done without permits compared with the approved plans. Upon completion of those plans, staff met with the applicant to discuss the issues and alternative solutions. The applicant proposed a revision to the as-built plan the applicant believes responds to the City's policies. Staff is in agreement with the applicant and recommends approval of the proposed project.

The proposed Preliminary Grading Plan will allow the applicant to re-grade sections of the rear yard by “smoothing it out” similar to its original condition. All grading work will eliminate any slopes created in excess of 3:1. The applicant will grade the slope west of the rear patio to eliminate the construction access road. Such grading will be at least 574 cubic yards less than the grading amount required to restore the entire rear yard area back to its original condition. Although a majority of the rear patio area will remain flat at the rear side of the residence, it is not visible from Highland Terrace or

beyond. Staff believes that the proposed grading will conform to the "Hill Area Development Policy", Conditions of Approval for P-96-11 and "Architectural Design Guidelines for Hunter Highlands".

As compared to the previous landscape plan approved by the Planning Commission, the proposed landscape plan (much of which has been planted) provides a symmetrical design and incorporates additional California native plants. The revised landscape plan includes a variety of palms and California native shrubs such as Wild Lilac and Rockrose, Evergreen Currant, Rosemary and Purple Majesty Sage. In addition, a variety of perennials and grasses are also proposed, such as the Santa Barbara Daisy, a variety of Sage and the Vine Hill Manzanita for hillside ground stabilization.

- **General Plan Conformance:** The existing General Plan land use designation for the project site is Very Low Density Residential, 0.5 – 1.5 dwelling units per acre. The proposed project conforms to the following General Plan policies.

*Hill Planning Area Design and Development Policy LU 6.19—All development shall be designed to minimize disturbances of the natural terrain and vegetation.*

Staff Comment: Although the as-built grading that occurred on this property does not meet the intent of this policy, the revised grading plan, which includes the removal of the construction road and restoration of non-permitted graded portions of the site visible from Highland Terrace, is designed to reduce the degree of disturbance that has occurred on the site. A majority of the flattened gravel patio area at the rear will remain. However, this area is not visible from Highland Terrace below. If the flattened gravel patio area is graded back to its original condition, it would involve an additional 574 cubic yards of additional grading than presently proposed, which may result in further disturbance of the site's condition. As a result, staff believes that the proposed project will conform to this policy and that the retention of a majority portion of the flattened rear gravel patio area is appropriate.

*Hill Planning Area Design and Development Policy LU 6.24—Hillside development shall conform to the natural grades and not scar the existing terrain and vegetation by excessive grading. Buildings should fit the land, not vice versa.*

Staff Comment: The previously approved plans met the intent of this policy in that it included minor grading beyond the footprint of the house to create a rear patio area, a sloped lawn, and patio at the west end of the house, and minor encroachments into the open space easement. Although the current condition does not meet the intent of this policy in that it includes a flat patio area and construction road extending into the open space easement, the proposed revised grading plan will allow the applicant to remove the construction road and restore portions of the site back to its natural grade. Staff therefore believes that this is an appropriate solution in meeting the intent of the policy.

- **Planned District Regulations:** The property is zoned Planned District, P-96-11 and is also known as Hunter Highlands. The following Hill Area Development Policy and Architectural Design Guidelines for Hunter Highlands (see enclosed informational item) address grading and landscaping for this project:

Hill Area Development Policy:

*To encourage the maximum retention of natural topographic features, such as drainage swales, streams, slopes, rock outcroppings, vistas, and natural plant formations.*

Architectural Design Guidelines for  
Hunter Highlands (Section 4(f) Grading):

*The design and development concepts of the Community call for the maintenance of the existing grades in as much of the original condition as possible....*

Staff Comment: While staff believes that while the as-built condition of the site is not in conformance with the Hill Area Policy and Design Guidelines approved for this development, the proposed revision to restore portions of the site back to its natural grade is in conformance with these policies and guidelines. Approximately 1,340 cubic yards of cut and fill is proposed to bring portions of the site into conformance.

**Open Space Easement Abandonment/Dedications:** The final map for Hunter Highlands, Tract 6866, included the dedication of an open space easement over approximately sixty percent of the subject 3.3-acre lot. The owner's statement on the final map includes the following:

*Said owner does hereby dedicate to the City of Fremont forever easements over any area or strip of land designated "OSE" (Open Space Easement) as delineated and embraced within the boundary of said map. Said areas or strips of land are to be kept open and free from buildings and structures of any kind. [Emphasis added]*

The applicant for Planned District P-96-11 included the following planned district justification:

*A minimum of 40 percent (8.0 acres) of the project site will be permanently preserved with an open space easement. This easement will allow residences to be constructed on the site, while at the same time maintaining enough open space for all surrounding properties to enjoy.*

The Zoning Ordinance, section 8-2199, defines structure as:

*"Structure" is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, except benches, statuary, planter boxes less than thirty-six inches in height, fish ponds less than eighteen inches in depth, and wood fences seventy-two inches or under in height.*

The Planning Commission is asked to recommend an Open Space Easement Abandonment to the City Council. The Open Space Easement Abandonment (Abandonment/ In-lieu Dedication) is necessary to allow the applicant to retain the hardscape improvements (staircase) at the rear portion of the residence, the enlarged patio on the west side of the residence, and the water tanks behind the pool addition. In lieu of the areas proposed for abandonment, the applicant proposed to grant a Open Space Easement of comparable size to the City. Overall, the proposed reduction of the existing open space easement is 8,424 square feet. In order to maintain the overall square footage of open space easement, the applicant proposes to add 8,537 square feet to the open space easement, mainly on the sloped area northwest of the existing residence. Both the Open Space Easement Abandonment and the acceptance of the new/in-lieu Open Space Easement dedication are subject to review and approval of the City Council.

- **Circulation/Access Analysis:** Access to the project site (lot 13) is from Highland Terrace, an existing private street, used for private ingress and egress to lots 10, 11, 12, and 13 of Hunter Highlands, Tract 6866. Highland Terrace connects to the public right-of-way at the cul-de-sac bulb of Highland Place. A long driveway has been constructed near the end of Highland Terrace to serve the residence. Additionally, a vehicle gate and construction road was graded from the southwest corner of the site to the back of the residence. The applicant proposes to remove this gate and construction road.

**Mission Peak Landslide:** The project site is within the Mission Peak Landslide Area and is subject to the development policy adopted by City Council on February 22, 2000. The applicant has provided a letter dated May 10, 2002, from the Project Geotechnical Consultant, Milstone Geotechnical, stating that the grading done on the southwest side of the residence is in substantial compliance with the approved Milstone Geotechnical report dated January 2000. The letter is based upon observations made by the Project Geotechnical Consultant, but it is unclear whether the current improvements were in place at the time this letter was written. The Project Geotechnical Consultant shall provide an addendum to the Milstone Geotechnical report. The addendum would be based on the proposed site plan revisions and as-built improvements and would be subject to review and approval of the City's Geotechnical Peer Review Consultant.

**Urban Runoff Clean Water Program:** The Federal Clean Water Act of 1972 and Water Quality Act (1987) require localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. The applicant will comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.

**Environmental Analysis:** This project is exempt from environmental review per CEQA section 15303, New Construction or Conversion of Small Structures as it relates to the development of a single-family residence.

<b>Enclosures:</b>	Exhibit "A"	(Preliminary Grading Plan and Landscape Plan)
	Exhibit "C"	(Open Space Easement Abandonment)
	Informational 1	(As-Built Grading Plan Compared with Approved Grading Plan)
	Informational 2	(Approved Site Plan and Landscape Plan for Main Residence)
	Informational 3	(Approved Site Plan and Landscape Plan for Pool Addition)
	Informational 4	(Open Space Easement In-Lieu Dedication)
<b>Exhibits:</b>	Exhibit "A"	(Preliminary Grading Plan and Landscape Plan)
	Exhibit "B"	(Findings for Preliminary Grading Plan, Conditions of Approval for PLN2003-00041)
	Exhibit "C"	(Open Space Easement Abandonment)

**Recommended Actions:**

1. Hold public hearing.
2. Find PLN2003-00041 is categorically exempt from environmental review per CEQA section 15303, New Construction or Conversion of Small Structures.
3. Recommend approval of the Open Space Easement modifications as indicated in Exhibit "C" to the City Council.
4. Approve PLN2003-00041 as indicated in Exhibit "A", based on findings for Preliminary Grading Plan and subject to Conditions of Approval indicated in Exhibit "B".

**EXHIBIT "B"**  
**PLN2003-00041**  
**(Planned District Minor Amendment to P-96-11 and Preliminary Grading Plan)**  
**Dham Grading and Landscaping- PLN2003-00041**  
**March 27, 2003 Planning Commission Meeting**

**Findings for Preliminary Grading Plan:**

The findings below are made on the basis of information provided at the public hearing and contained in the staff report to the Planning Commission dated March 27, 2003, incorporated herein.

- a) The proposed project described in the application will not have an appearance, due to the grading, excavation, or fill, substantially and negatively different from the existing natural appearance in that the proposed grading will only allow 917 cubic yards of cut and 423 cubic yards of fill to restore portions of the site back to its original appearance.
- b) The proposed project described in the application will not result in geologic or topographic instability on or near the site because the proposed project will be required to conform to the development policy adopted by City Council as the project site is located within the Mission Peak Landslide Area. In addition, the applicant will be required to provide an addendum to the Milstone Geotechnical report previously submitted for the development of the site to ensure that the proposed project's current grading work is consistent with the City's policies.
- c) The proposed project described in the application will not endanger public sewers; storm drains, watercourses, streets, street improvements, or other property; will not interfere with existing drainage courses; and will not result in debris being deposited on any public way. The proposed development will not alter or obstruct the natural flow from abutting properties or divert drainage from its natural watershed. The applicant will be required to implement a plan to control erosion and siltation during the period of construction.
- d) The proposed project described in the application is not located in the Alquist-Priolo Hazard Zone, but is identified as a site located within the Mission Peak Landslide Area. A Geotechnical report was previously submitted for the development of a residence on the lot. An addendum to that report will be required to conform to the adopted the Mission Peak Landslide development policy for the proposed grading work onsite.
- e) The proposed project described in the application will not unacceptably affect the health, safety, and or welfare of adjacent residents or landowners, nor the citizens of Fremont.

**Planned District Minor Amendment Conditions of Approval:**

- 1. The applicant shall submit revised site, grading, and landscape plans to the Development Organization for review to insure conformance with relevant codes, policies, and other requirements of the Fremont Municipal Code. A building permit, or an approved revision to the previously issued building permit, is required for the as-built improvements done without a permit.
- 2. Approval of this Planned District Minor Amendment and Preliminary Grading Plan (PLN2003-00041) shall be effective only after City Council approval of the proposed open space easement modifications (abandonment and in-lieu dedications).
- 3. The vehicle gate installed on Highland Terrace, along the southwest corner of the site, shall be removed and replaced with a permanent fence, which matches the existing fence along the Highland Terrace frontage. The design of the replacement fence shall be subject to review and approval of staff during Development Organization.
- 4. The contractor shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.

5. The project plan shall include erosion control measures to prevent soil, dirt, debris, or other pollutants from entering the storm drain system during and after construction. A separate plan shall be submitted for this purpose and shall be subject to staff review and approval during the Development Organization process.
6. The contractor is responsible for ensuring that all contractors are aware of all storm water quality measures and that such measures are implemented. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.

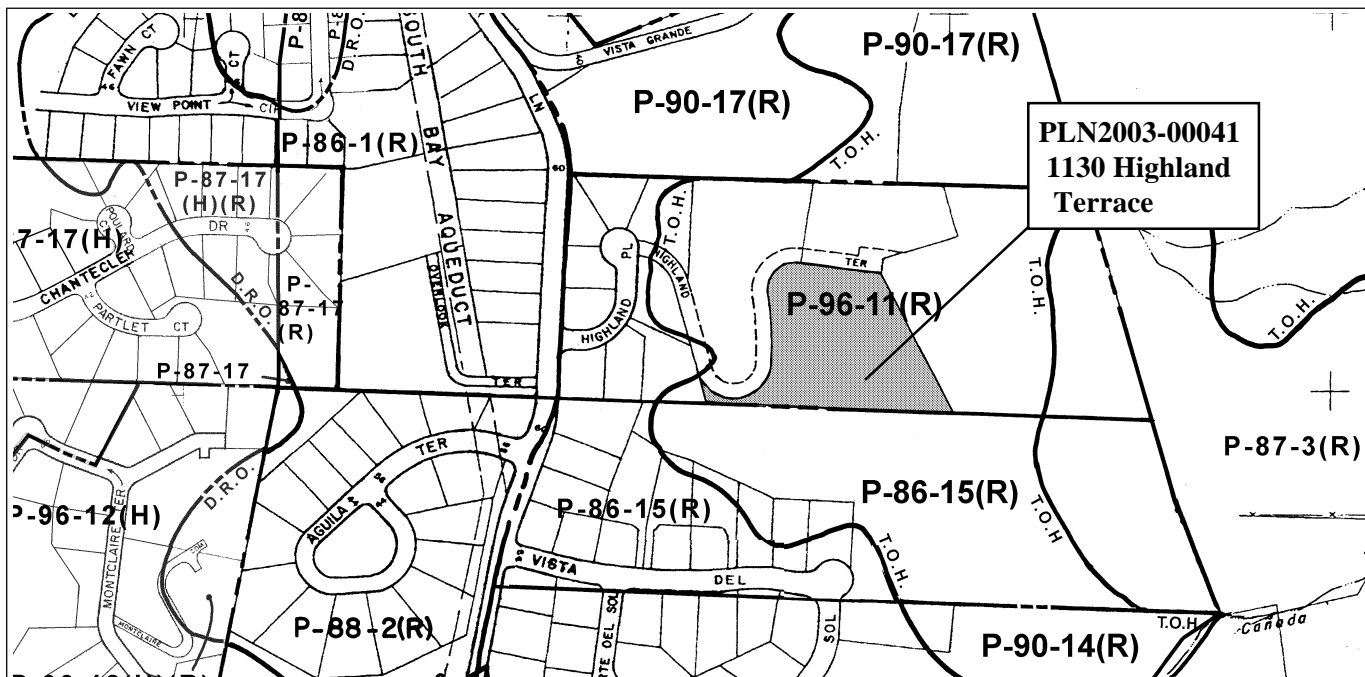
**Conditions of Approval for Preliminary Grading Plan:**

7. The project shall conform to Exhibit "A" (Preliminary Grading Plan), all conditions of approval set forth herein, and all conditions of approval of Planned District PLN2003-00041 (Exhibit "B").
8. Approval of this preliminary grading plan does not extend to the final detailed design approval necessary to be accomplished in connection with the development plans.
9. The applicant shall obtain a final grading permit in accordance with the Fremont Municipal Code, Title VIII, Chapter 4, Grading, Erosion And Sediment Control. The grading permit shall be subject to approval of the City Engineer during the Development Organization review process.
10. Approval of this preliminary grading plan shall terminate 24 months from the date of approval by the Planning Commission.
11. The Project Geotechnical Engineer shall provide an supplemental report or addendum to the "Geologic and Geotechnical Investigation" prepared by Milstone Geotechnical, dated January 31, 2000. The supplemental report or addendum is subject to peer review and approval by the City's Geotechnical Peer Review Consultant, prior to issuance of the grading permit.
12. Grading operations shall be in accordance with recommendations contained in the supplemental geotechnical report and shall be supervised by the Project Civil Engineer and the Project Geotechnical Engineer. Completion of grading reports from both the Project Civil Engineer and Project Geotechnical Engineer shall be provided for review and approval of the City Engineer prior to final occupancy for the building.
13. All cut and fill slopes shall be constructed to a maximum of three horizontal to one vertical (3:1).
14. A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the grading permit. The off-site haul route for the excess dirt or import fill shall be subject to the approval of the City Engineer.
15. The applicant may be allowed grading deviation up to a maximum of one foot (plus or minus) between the preliminary grading plan and the final grading plan. Deviation over one foot may be referred to the Planning Commission subject to approval of the City Engineer.
16. In accordance with the Grading Ordinance, the applicant shall provide a faithful performance bond to pay for all work to be performed under the required grading permit. The performance bond shall be released only after all work is completed under the terms of the permit, subject to City Engineer approval.
17. Grading activities shall be limited to the following hours:  
  
7:00 AM to 7:00 PM – Monday through Friday  
9:00 AM to 6:00 PM – Saturday  
There shall be no Sunday construction.

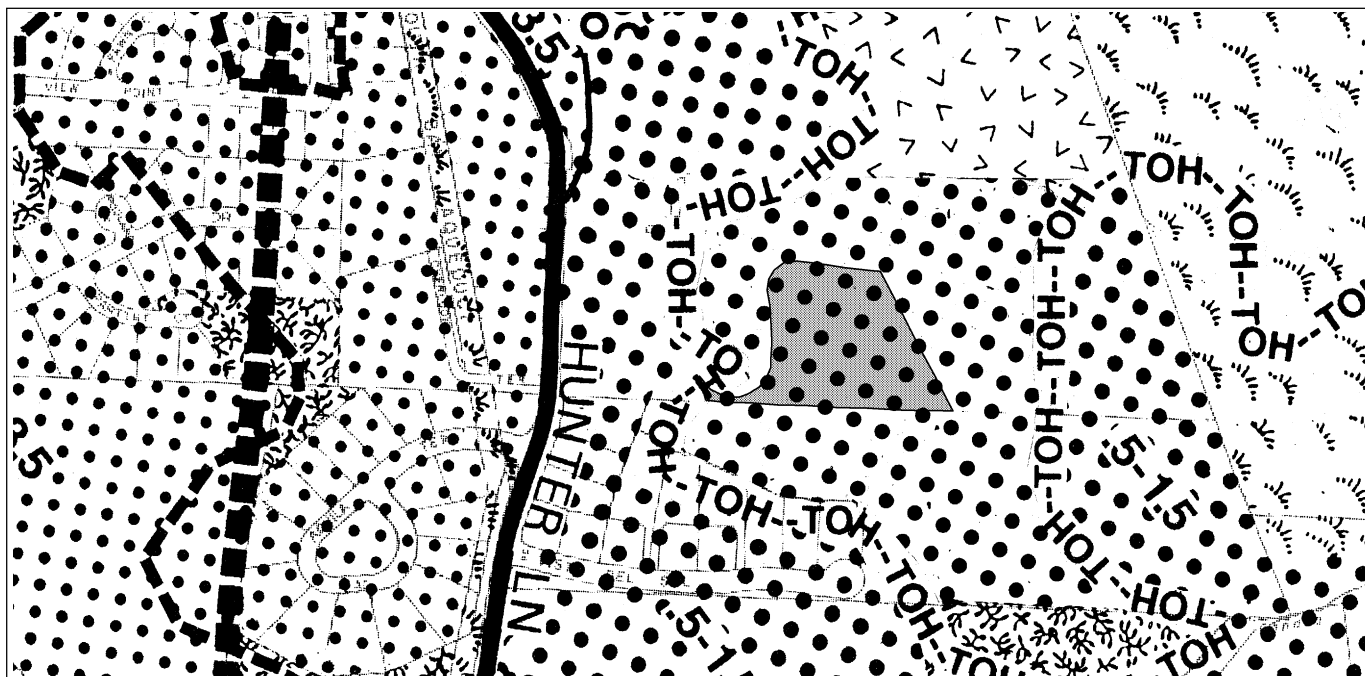
Failure to comply with these hours of operation may result in the withholding of inspections.



# INFORMATIONAL



## Existing Zoning




## Existing General Plan

<b>Project Number:</b>	PLN2003-00041 (PD Minor Amendment)
<b>Project Name:</b>	Dham Residence Grading and Landscaping
<b>Project Description:</b>	To consider a Planned District Minor Amendment to P-96-11 and Preliminary Grading Plan for changes to grading and landscaping for a previously approved new single family residence.

**Note:** Prior arrangements for access are not required for this site.



$1'' = 500'$



0' 500'